Annual Report

July 1998 to June 1999

ALBERTA LAW REFORM INSTITUTE

EDMONTON, ALBERTA

ANNUAL REPORT
July 1998 - June 1999

ISSN 0229 - 6276
ISBN 1-896078-34-6

The Institute's office is located at:

402 Law Centre
University of Alberta
Edmonton, Alberta
CANADA T6G 2H5

Telephone: (780) 492-5291

Fax: (780) 492-1790

Internet Address: reform@alri.ualberta.ca

Website: http://www.law.ualberta.ca/alri

THE INSTITUTE

The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH
To conduct and direct research into law and the administration of justice.

RECOMMEND
To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE
To promote law research and reform.

COOPERATE
For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

THE ALBERTA LAW REFORM INSTITUTE'S

Board:

Mr. Justice B.R. Burrows
C.W. Dalton
A. de Villars, Q.C.
Hon. Judge N.A. Flatters
W.H. Hurlburt, Q.C.
H.J.L. Irwin
P.J.M. Lown, Q.C.
Dr. S.L. Martin, Q.C.
Dr. D.R. Owram
Madam Justice B.L. Rawlins
Mr. Justice N.C. Wittmann
Professor R.J. Wood

Legal Staff:

Professor Peter J.M. Lown, Q.C., Director
Richard H. Bowes
Christina Gauk
Janice Henderson-Lypkie
W.H. Hurlburt, Q.C.
Margaret A. Shone
Vivian Stevenson

Administrator:

Carol Fowlie

Librarian:

Tanya Filanovsky — *Until March 1999*

Support Staff:

Marlene Welton
Dina Henderson
Jenny Kozlar

TABLE OF CONTENTS

In late 1996, the Institute had to replace the traditional memento which is given to retiring Board members. The stylized logo and base that we chose as a replacement was christened a "Wilbur." We reasoned that other awards could have "Oscars" or "Nellies," but no other body could give a "Wilbur."

Though lighthearted in some ways, the gesture was an attempt to express our feelings in a tangible manner – everyone who has served the Institute has in some way been touched by the life of Wilbur Fee Bowker.

The original "Wilbur" was presented to Dr. Bowker at his home on May 26, 1997. The inscription reads as follows:

"The Wilbur"
An award recognizing service to the
Alberta Law Reform Institute and its Board
Fondly named after our 1st Director,
Friend in law to all

In typical fashion, Dean Bowker read the inscription aloud, expressed his delight, and thanked the presenters – simple, direct, genuine, and effective, as always.

Dean Bowker was the first Director of the Institute of Law Research and Reform when it was established in 1967. He shaped and moulded the organization, clothed it with achievement and aspirations and handed it over to others to carry on according to his fine example. He remained as a Director Emeritus, advisor to the Board, helper to Counsel. He was available and genuinely interested in any question or requests for information that were addressed to him. Until relatively recently, he was at the Institute on an almost daily basis, and was the unfailing institutional memory of the work of the Institute.

For many, as was the case when he was Dean of the Faculty of Law, Wilbur Bowker and the Institute are synonymous.

The conventional description of Dr. Bowker might be as follows:

- Born - Ponoka, Alberta
- Graduated with a B.A./LL.B. from the University of Alberta in 1932
- Admitted to the Law Society of Alberta in 1933
- An associate with the firm of Milner Steer from 1934 to 1946
- Entered the Armed Forces as a private and left as a Captain of the 3rd Battalion of the Edmonton Fusiliers. In fact he was "discharged" to the firm of Milner Steer on loan to the Law Faculty at the University of Alberta from 1945 to 1946
- Dean of the Faculty from 1948 to 1968, and Director of the Institute of Law Research and Reform from 1968 to 1975.
- Honorary Bencher, Honorary CBA member, Honorary member of the Edmonton and Calgary Bar Associations, recipient of the Justice Medal from the Canadian Institute for the Administration of Justice.
- He might have pointed with some personal pride to his honorary Doctor of Laws degree from the University of Alberta, and to being an Officer of the Order of Canada.

But, it was the qualities of the man that created a far more lasting and personal impression, and explain why so many speak so respectfully and affectionately of "Wilbur."

There is a photograph that I see many times a day in the Institute offices. It is one of a series of portraits of Institute Directors. This photograph gives some hint of the influence Dr. Bowker had on so many people.

- The hint of shyness... that is overtaken by courtesy and respect for each individual that Wilbur contacted.
- The hint of a smile... which belies his unbounded energy and enthusiasm for the law, its people, and its history.
- The hint of focussed view... which some may mistakenly have thought obscured him to other details of context and setting, only to be confounded by his incredible recall of events, names, places, interests, comments, and relevant personal detail.
- The hint of imperiousness... which at most might have been in the lens of the photographer, but we all knew was the window to his patience, understanding, gentle prying and suggestion, questioning, and leading, all done in the most genuine, modest and self-deprecating manner.

Few have been so admired, so cherished, and such a beacon to others who followed. Thank you, sir, and good-bye.

Last year the Institute celebrated 30 years of service to the people of Alberta. It was important to mark the milestone and just as important to record those individuals who have contributed to the Institute and the many projects which have been completed in that 30 year time span. At that time, it was remarked that the Institute had changed somewhat over its 30 year life. It was noted that a law reform agency cannot stand still, and must adjust to the changing landscape, the changing expectations of the agency, and the changing methodology which it employs.

Our first major event was the conference entitled, "Law Reform 2000," which was co-hosted in Edmonton in March of 1998 by the Law Commission of Canada and the Institute. That Conference produced a Final Report during the 1998/1999 year. The report paints a snapshot of law reform activity across Canada and poses questions and issues that must be addressed by law reform agencies as they head into the next millennium.

For its own part, ALRI took the opportunity of engaging professional experts to assist the Institute in a comprehensive review of its activities and its organization. The last major organizational review was carried out in 1985 and 1986 and despite constant fine tuning and editing, the time was ripe for another overall comprehensive review.

The Institute has just gone through a five-year period of reduced and somewhat uncertain funding. Along with the downsizing of government departments (and the activities that the departments sponsored) that time period has seen two major government departmental reorganizations and a radical change in the way policy has developed and been implemented.

We have seen summits on health and the economy, and on other subjects. Caucus Standing Policy Committees have been created. Much more is effected through Regulation and Ministerial Order. The role of the Legislature is changed, and the amount of legislation and legislative opportunities is much reduced.

The five-year period since 1993 has been a time of significant change, some turmoil, and a great deal of uncertainty.

It was, therefore, appropriate to undertake the organizational review at this time. The Institute approached the task in three stages. The first, the situational analysis, was carried out by extensive internal and external interviews with all of those bodies and agencies with whom the Institute interacts. The purpose of this stage was to create a composite picture of the Institute's activities and to determine how the Institute is perceived by outside agencies in how the Institute carries out its tasks. The second stage, staff review, allowed Institute staff to review all the operations and procedures within the Institute, to examine the goals and objectives of the agency, and to examine the role of various individuals within the Institute, and the skill sets that would be necessary in carrying out current or adapted future roles. Finally, the Board carried out a review of its role and operations and reviewed the proposals coming out of the staff review process.

The review as a whole asked a number of pertinent questions.

- How relevant is the Institute?
  - ✧ How does the Institute choose its projects and why?
  - ✧ What input does the public have in that process?
  - ✧ Have the choices of projects been right?

- Is the Institute responsive?
  - ✧ Can the Institute respond in an appropriate time frame?
  - ✧ Does the Institute respond with a useable product?

- What is the Institute's output?
  - ✧ Does the Institute adapt its output?
  - ✧ Does the Institute use a flexible process?
  - ✧ Is the output static, or does the output strive for too high a quality?

These are all important questions which our consultants allowed us to face in an informed way, and, as result, a number of initiatives have come out of the review process. They are:

1. A more active generation of areas and topics in need of reform attention.
2. A greater integration of broad community interest into our process of selecting projects.
3. Approval of business plans with time lines and expectations, as an integral part of the project selection process.
4. Closer monitoring of our project process according to the business plans.
5. Increased Board efficiency in terms of time and project coverage.

Some of these initiatives are already in place while others will be phased in gradually. Two pilot projects have been commenced on the topics of Class Proceedings and Prudent Investor and the results of those pilot projects will be reviewed during the next year.

Another area of adjustment is what type of document to use for consultation purposes. We have experimented more recently with a Consultation Memorandum which is sent to a targeted audience. In effect a copy in the appropriate medium is provided to a smaller audience, and an electronic copy is freely available on our website to a much broader audience. This provides some savings in overall cost, even though the unit cost of the Consultation Memorandum is higher. So far, we have been able to obtain a slightly better response rate from the targeted audience in a shorter period of time, and that has assisted in the policy development process. On the other hand, we have to determine whether the wider audience is aware of the wider distribution electronically through the website, and is comfortable with that method of distribution.

We will continue to monitor the use of this consultation document to determine whether the beneficial results that we have seen from the first few memos continue.

Despite all this change, the Institute continues to have a full agenda, and continues to draw on the support of the broad legal community. We are grateful for all of this assistance, freely and enthusiastically given, and we look forward to continuing to improve the law and administration of justice in Alberta.

Summer Students

Each summer we retain several students to assist with project research. This gives the students some experience in the type of research and writing we do, and assists counsel with some of the overall workload. Our students are of consistently high calibre and make a real contribution to our activities.

Summer 1998	Summer 1999
Frank Friesacher	Debra Curcio
Naomi Nind	Denise Espeut
Anne Schutte	Glenn Taylor

Organization Chart
1998/99

ALBERTA LAW REFORM INSTITUTE BOARD

Hon. BR Burrows
CW Dalton
A deVillars QC
Hon. NA Flatters
WH Hurlburt QC
HJL Irwin
Dr. SL Martin QC
Dr. DR Owram
Hon. BL Rawlins
Hon. NC Wittmann
Prof. RJ Wood

DIRECTOR
Peter JM Lown QC

COUNSEL

RH Bowes
C Gauk
J Henderson-Lypkie
WH Hurlburt QC
MA Shone
V Stevenson

ADMINISTRATOR

C. Fowlie (.9 fte)

SUPPORT STAFF

D. Henderson (.6 fte)
J. Koziar (.8 fte)
M. Welton

LIBRARIAN

T. Filanovsky (.6 fte) *
until March 1999

Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.

- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.

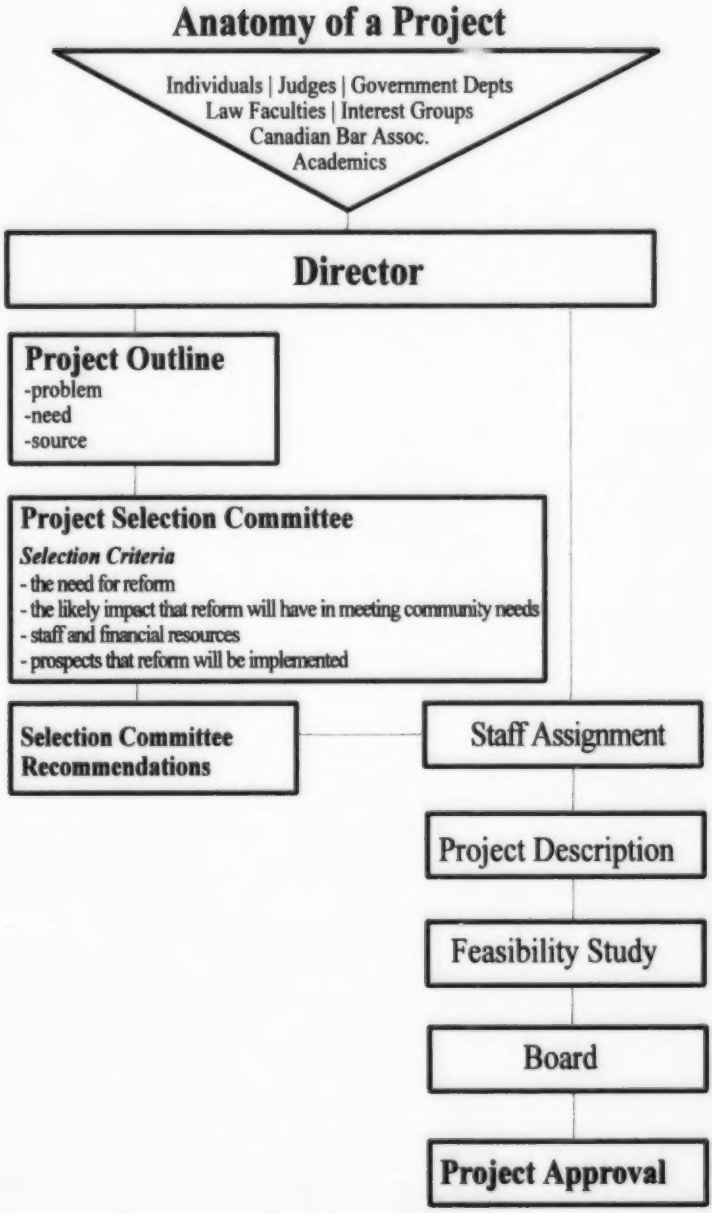
- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.

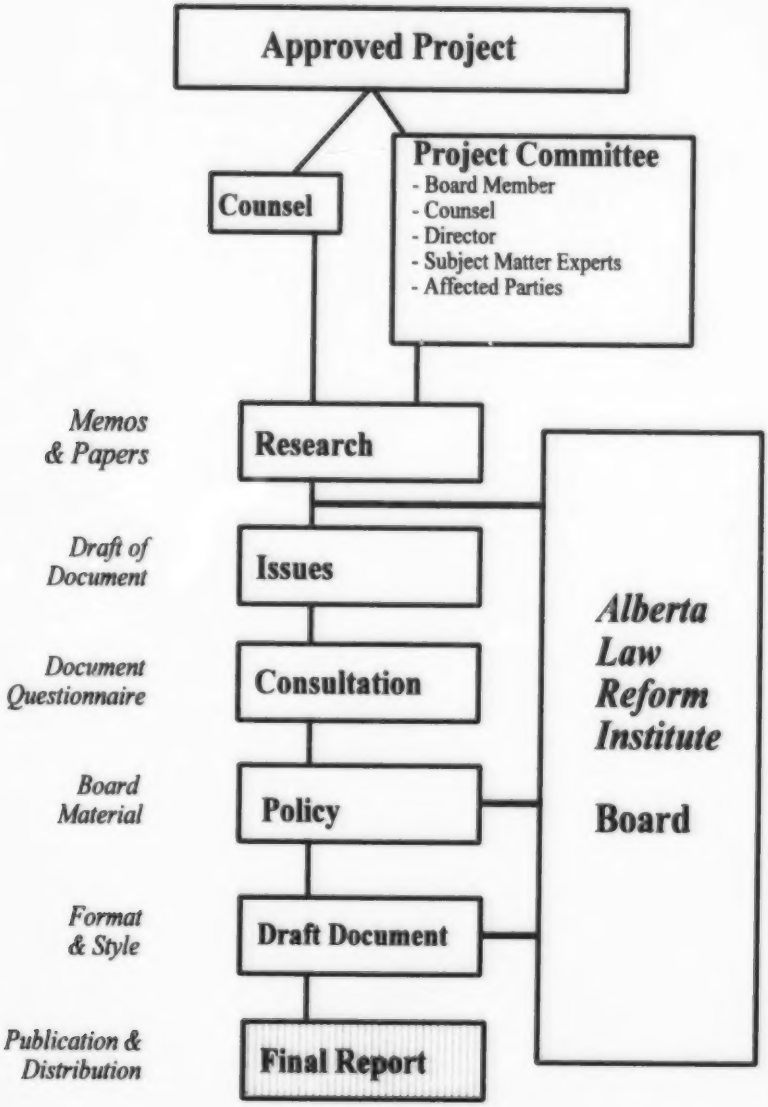
- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

Methodology

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

The methodology of the program is described on charts "**Anatomy of a Project**" – from idea to approved Project and "**Approved Project**" from Project to Final Report. (See pages 13 and 14.)


Anatomy of a Project
Individuals | Judges | Government Depts
Law Faculties | Interest Groups
Canadian Bar Assoc.
Academics
Director
Project Outline
-problem
-need
-source
Project Selection Committee
Selection Criteria
- the need for reform
- the likely impact that reform will have in meeting community needs
- staff and financial resources
- prospects that reform will be implemented
Selection Committee Recommendations
Staff Assignment
Project Description
Feasibility Study
Board
Project Approval


Approved Project
Counsel
Project Committee
- Board Member
- Counsel
- Director
- Subject Matter Experts
- Affected Parties
Memos & Papers
Research
Draft of Document
Issues
Document Questionnaire
Consultation
Board Material
Policy
Format & Style
Draft Document
Publication & Distribution
Final Report
Alberta Law Reform Institute
Board

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

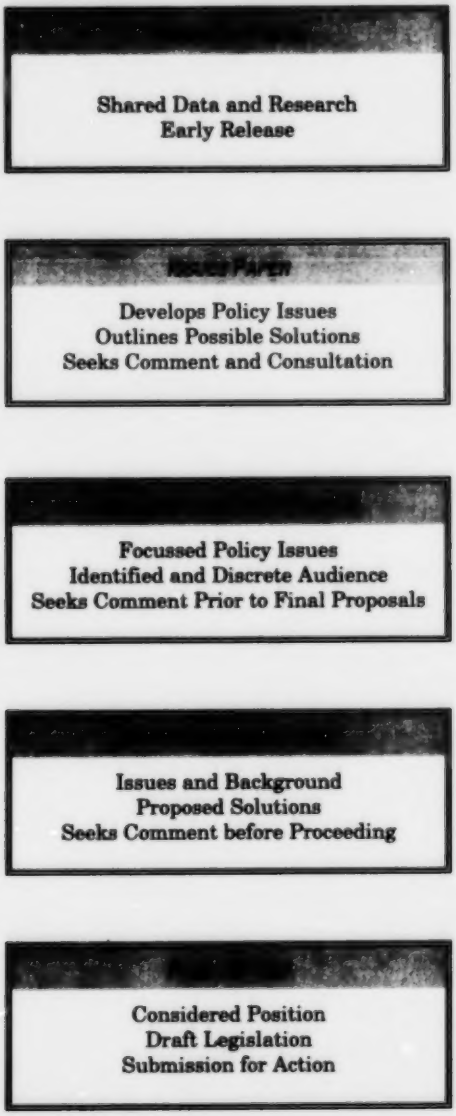
Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our reports on Corporate Directors' Liability and Dispute Resolution processes were intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the Recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of Alberta. Our reports on Arbitration and on Limitations are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:



During this year ALRI issued three Final Reports, a four-volume Report for Discussion, and two Consultation Memoranda. The Executive Summaries are set out below.

Final Report No. 76

Should a Claim for the Loss of a Chance of Future Earnings Survive Death?

Reason for report

Under the common law, a person who is injured by a wrongful act can claim money damages from the wrongdoer as compensation for earnings which the injured person might have received in the future but will not have a chance of earning because of the injury. These damages may be substantial. The damages are variously said to be for loss of earning capacity, loss of the ability to earn, or loss of future earnings. In our view, what is lost is a chance of future earnings.

Section 2 of the *Survival of Actions Act*[1] provides that "a cause of action vested in a person survives for the benefit of his estate." Section 5, however, provides that "only those damages that resulted in actual financial loss to the deceased or his estate are recoverable."

When the *Survival of Actions Act* was enacted in 1978, it was thought that the loss of a chance of future earnings is not an "actual financial loss." It was, therefore, thought that s. 5 would prevent a deceased injured person's estate from claiming damages for the loss of future earnings, that is, it would prevent such a claim for damages from surviving the death of the injured person. However, in *Duncan Estate* v. *Baddeley*,[2] the Court of Appeal of

---

[1] R.S.A. 1980, c. S-30.

[2] *Duncan Estate* v. *Baddeley* (1997), 196 A.R. 161, 50 Alta. L.R. (3d) 202, 145 D.L.R. (4th) 708 (C.A.) [hereinafter *Duncan* v. *Baddeley*]. All references below are to the report in the Alberta Reports.

Alberta held that a loss of earning capacity, or a loss of a chance of future earnings, is an "actual financial loss" under s. 5 and that the claim for damages therefore survives and can be brought by the deceased injured person's estate.

The question addressed by this report is what the policy of the law should be: should a claim for damages for the loss of a chance of future earnings survive the death of the injured person, or should it not? When the question is answered, the *Survival of Actions Act* should be amended so that the Act will clearly reflect its intention.

1. Reasons and conclusions

This report gives reasons for a number of conclusions about questions which are raised in the discussion.

First, the basis for awarding money damages for the loss of a chance of future earnings is and should be compensation for the injured person.

Second, money damages cannot compensate a deceased person, and a deceased person's loss of a chance of future earnings has not caused any loss to the deceased person's estate, so that, if the injured person has died, damages for the loss of a chance of future earnings cannot go to compensate anyone.

Third, justice does not require that damages for the loss of a chance of future earnings be awarded for any purpose other than compensation. More specifically, justice does not require that such damages should be awarded to punish the wrongdoer (or an employer, partner, car-owner or insurer of the wrongdoer who actually pays the damages); justice does not require that a deceased person's estate should be able to recover damages merely because the deceased person could have obtained a judgment if they had lived until the trial of a lawsuit claiming the damages; and justice does not require an award to be made to a deceased person's estate on the grounds that the chance of future earnings is a "working-man's" capital.

Fourth, justice to surviving family members does not require that an estate be able to claim damages for the deceased person's loss of a chance of future earnings. Under the *Fatal Accidents Act*, prescribed lists of surviving family members can recover damages for the loss of expected financial support or services from the deceased person and for grief and the loss of guidance, companionship and care. That is the direct way and the effective way to do justice to survivors.

Fifth, a chance of future earnings is not heritable property, and property doctrines do not require that a secondary right – a claim for damages for the loss of a chance of future earnings – be heritable when the chance on which it is based is not heritable.

Sixth, in order to assess damages for the loss of a chance of future earnings a court must, in the words of Chief Justice Brian Dickson, "gaze...into the crystal ball;" engage in "speculation;" rely on actuarial evidence the reliability of which is "illusionary" in relation to a specific case; and engage in "arbitrary" determinations. Such a process is justifiable in order to ensure that a living plaintiff is properly compensated, but it is not justifiable when the damages cannot go to compensate a living person.

The report then states in general terms what, in ALRI's view, the law should be. A claim for damages should survive if the damages will compensate an injured person or the injured person's estate. The test is whether the loss for which damages are claimed is actual, in the sense of being factual or real as opposed to potential, and whether the loss is financial, in the sense of being or pertaining to a money or property loss which will affect the injured person's heritable property. The loss of a chance of future earnings may be characterized as "actual", but as a "financial loss," in ALRI's view, it is only potential. As we have said above, in ALRI's view, damages for the loss of a chance of future earnings awarded to the estate of the injured person will not be compensation to the injured person, and the injured person's heritable property is the same whether or not the injured person has suffered the loss.

For these reasons, the report concludes that s. 5 of the *Survival of Actions Act* should be amended to provide that a claim for damages for the loss of a chance of future earnings should not survive for the benefit of a deceased person's estate. The amendment should apply in all cases in which the cause of action arises after the amended section comes into force.

Final Report No. 77
Limited Liability Partnerships

OVERVIEW

In Alberta most types of enterprise can be carried on by corporations whose shareholders enjoy limited liability for the corporation's obligations. The exception is that a few professions – accounting, law and certain health care disciplines (medicine, dentistry, chiropractic and optometry) – cannot be carried on by ordinary corporations. They can be carried on by "professional corporations," but the shareholders of professional corporations do not enjoy limited liability for the corporation's liabilities.

The restrictions on limited liability professional practice used to apply to a wider range of professions. Over the years, however, restrictions on limited liability practice of professions such as engineering, architecture and pharmacy have been removed. Looking beyond Alberta's borders, it is readily apparent that there is a clear trend towards the removal of traditional restrictions on limited liability professional practice. In most states of the United States, for example, it is now possible for a limited liability firm to carry on any profession.

The fundamental issue considered in this report is whether the accounting, legal and health care professionals who are currently required to practise in unlimited liability firms should be given the option of practising in limited liability firms. We conclude that they should be given this option. One argument for allowing these professionals to practise in limited liability firms is simply that, on this issue, there are no compelling reasons for distinguishing between professional enterprises and the general run of enterprise that can be carried on through a limited liability firm. However,

our recommendation is also based on somewhat more specific reasons, which are mentioned momentarily.

The traditional vehicle for limited liability enterprise is the business corporation, while the traditional vehicle for unlimited liability professional practice has been the ordinary partnership. Over the last ten years almost every American state has adopted a hybrid limited liability vehicle known as the limited liability partnership ("LLP"). The LLP is essentially an ordinary partnership whose members enjoy limited liability with respect to some or all of the firm's obligations. In particular, innocent members of an LLP are not subject to personal "vicarious liability" for malpractice liabilities of the firm merely because they are a member of the firm. Only those members of the LLP who are in some way personally implicated in the wrongful acts or omissions that created the liability are subject to unlimited personal liability.

Canadian professionals – especially accountants and lawyers – have been lobbying provincial governments to be permitted to practise in limited liability firms. But more specifically, they have been urging provincial governments to import the LLP concept from the United States and to permit professionals to practise in LLPs. They have argued that the LLP is a more suitable vehicle for limited liability practise than the corporation. There is not an overwhelmingly persuasive case for adopting the LLP concept, as opposed to allowing professionals to practise in limited liability professional corporations. On the other hand, we do not think allowing professionals to practise in LLPs is any more problematic than allowing them to practise in limited liability corporations. Therefore, we recommend that Alberta enact LLP legislation. We also recommend that the LLP be made available to any type of enterprise, not just to the members of certain professions.

SUMMARY OF CHAPTERS

This section provides a brief summary of the points discussed and the major recommendations in each of the report's three chapters.

Chapter 1 – Introduction

This chapter does not contain any recommendations. It provides a somewhat more detailed overview of the issues than is provided in this summary and

outlines the history of this project. It also provides a general description of certain legal concepts that play a central role in the more detailed discussion in Chapters 2 and 3.

Chapter 2 – Limited Liability and Professionals

This chapter is the core of the report. It begins by discussing the historical position regarding limited liability professional practice in Alberta and kindred jurisdictions. It then moves on to consider the fundamental issue whether it is appropriate to allow professionals – and here we are referring to the accounting, legal and health care professions – to practise in limited liability firms. A distinction is drawn between liability for ordinary obligations (e.g. loans and office leases) and malpractice liabilities of the firm. It is suggested that the issue of limited liability for ordinary obligations is not all that important, but that the decision on this issue should follow the decision on the issue of limited liability for malpractice liabilities.

When we consider limited liability for malpractice liabilities, we focus on two main issues. First, would limited liability professional firms be likely to provide lower quality service than unlimited liability firms? Our conclusion is that any adverse effect of limited liability on the overall quality of service provided by professional firms is likely to be negligible. We reach this conclusion on the basis that the incremental incentive to supply professional services of optimal quality provided by unlimited liability is relatively minor when compared to other incentives, such as reputational concerns.

The second main issue relating to malpractice liabilities is the allocation of risk of loss as between the members of a professional firm and the potential victims of malpractice by one (or more) of the firm's members or employees. Here, we suggest that limited liability raises concerns regarding the potential for inappropriate shifting of malpractice risk to unsophisticated clients (or in some cases, non-clients) of professional firms. These concerns, however, can for the most part be allayed by robust mandatory insurance requirements. One situation where mandatory insurance requirements cannot prevent the shifting of risk from members professional firms to clients (or non-clients) is where potential claims are so large as to be uninsurable.

We conclude, however, that in such cases limited liability does not necessarily produce an inappropriate allocation of risk between the affected persons.

The main recommendations contained in Chapter 2 are to the following effect.

- The professionals who cannot currently practise in limited liability firms in Alberta should be permitted to do so, and these firms should provide limited liability against ordinary obligations as well as malpractice liabilities (Recommendation 1);

- The affected professionals should be permitted to practise in limited liability firms only if they have met minimum insurance requirements and have met any other conditions prescribed by the relevant governing body (Recommendations 2 and 3);

- A professional who is personally implicated in wrongful acts or omissions that create a malpractice liability for a limited liability firm should be personally liable for the liability along with the firm (Recommendation 6).

Chapter 3

Chapter 3 is concerned with the implementation of our proposal to enact LLP legislation. Most of its recommendations are concerned with "nuts and bolts" issues that we will not attempt to summarize here. However, a few of the more substantial recommendations are worth noting here.

- LLPs should be available to any enterprise, not just to the members of certain professions (Recommendation 7).

- Although members of an LLP should generally enjoy limited liability with respect to all liabilities of the LLP, they should be liable for certain "special liabilities" for which directors of a corporation would be liable, in particular, for wage claims (Recommendation 11).

- LLPs should be subject to restrictions on distribution of firm assets to members of the firm that are similar to the restrictions that apply to corporations and limited partnerships (Recommendation 13).

SUMMARY REPORT

In early December, 1998 we provided the Alberta government with a summary report that set out the recommendations that we intended to make in this report and provided a brief explanation of our rationale for those recommendations. Apart from minor changes in the wording and arrangement of certain recommendations, the recommendations in this report are identical to those in our summary report.

Final Report No. 78

Reform of the Intestate Succession Act

SCOPE OF THIS REPORT

The estate of a person who dies without a will is distributed according to the Intestate Succession Act, which is patterned after the Statute of Distribution, 1670 (U.K.), as amended. It comes as no surprise that a distribution scheme developed in 1670 fails to meet the needs of modern society. This report examines the existing law of intestate succession and proposes a new distribution scheme designed to reflect the views of Albertans and serve modern society.

In reforming this area of the law, we have been guided by the presumed intentions of intestates. It is not a matter of determining the actual intention of the deceased, but of examining a group with similar familial circumstances and equating the 'presumed intention' of an individual with the intention of the majority of individuals in the group. To learn of such intentions, we have relied upon information provided by Alberta lawyers who specialize in this area, studies of public opinion conducted in England and the United States, and a study of 999 files of the Surrogate Court of Alberta conducted in 1992. Each of these sources identified the same trends in public opinion concerning distribution of estates and, therefore, together offer significant direction for reform. We have also relied on statistics published by

Statistics Canada to determine general trends in Canadian society concerning lifespan, family size, marriage, divorce, and cohabitation outside marriage.

THE EXISTING LAW OF INTESTATE SUCCESSION

Under the present Intestate Succession Act, if the intestate dies leaving a surviving spouse but no issue, the entire estate goes to the surviving spouse. Where the intestate is survived by a spouse and issue, the spouse's share depends upon the number of issue that survive the intestate. If there is only one child, the spouse gets $40,000 plus one-half of the residue. The child gets the other half of the residue. Where there are two or more children, the spouse gets $40,000 plus one-third of the residue. The children share the remaining two-thirds of the residue. If there is no surviving spouse or issue, the estate is distributed to the nearest relatives in the following order: parents, then brothers and sisters, then nephews and niece, and finally next of kin. The closest relatives take to the exclusion of remoter relatives.

THE NEED FOR REFORM

The existing distribution scheme was designed to serve a society in which wealth was transferred from one generation to another, inheritance between spouses was exceptional, divorce was rare and cohabitation outside marriage was viewed as sinful. The distribution scheme must be reconfigured to serve modern society. Ours is a society in which the surviving spouse has replaced the children as the primary beneficiary, divorce and remarriage is prevalent, cohabitation outside marriage is commonplace, and section 15 of the Canadian Charter of Rights and Freedoms has been interpreted to extend protection to those who cohabit outside marriage in relationships similar to marriage.

As a result of societal changes, the existing distribution scheme no longer reflects how the majority of intestates in given situations would want their estate to be distributed. It has become a trap for the unwary.

PROPOSED DISTRIBUTION SCHEME

In our opinion, the distribution scheme created by the Intestate Succession Act should: a) reflect the presumed intention of intestates as measured by the

reasonable expectations of the community at large, and b) create a clear and orderly scheme of distribution. Our proposed distribution scheme reflects this premise.

Spouses

Studies show that the majority of spouses who are survived by a spouse and children of that marriage wish to leave their entire estate to the surviving spouse. Those spouses who are survived by a spouse and children, all or some of whom are of another relationship, are less likely to want their entire estate to pass to the surviving spouse. Nevertheless, the majority of spouses with children from another relationship still wish to treat the surviving spouse more generously than does the existing law.

The proposed distribution scheme would treat the surviving spouse as follows:

- If an intestate dies leaving a surviving spouse but no issue, the entire estate should go to the spouse.
- If an intestate dies leaving a surviving spouse and issue and all of the issue are also issue of the surviving spouse, the entire estate should go to the spouse.
- If an intestate dies leaving a surviving spouse and issue and one or more of the issue are not also issue of the surviving spouse, the share of the surviving spouse should be:
    - $50,000, or one-half of the estate, whichever is greater, and
    - one-half of the remainder of the estate.
- All the issue of the intestate would share equally the remaining half of the remainder of the estate.

A spouse would lose the right to share in the estate of his or her spouse where: 1) one or both of the spouses made an application for divorce or commenced an action under the *Matrimonial Property Act*, and 2) at the time of death, the application or action was pending or had been dealt with by way of final order.

Cohabitants

The proposed distribution scheme treats certain cohabitants as spouses of each other. Cohabitant is defined as follows:

> "cohabitant" means a person of the opposite sex who, while not married to the intestate, continuously cohabited in a marriage-like relationship with the intestate
>
> (i) for at least three years immediately preceding the death of the intestate, or
>
> (ii) immediately preceding the death of the intestate if they are the natural or adoptive parents of a child.

The court would consider certain factors in determining if a relationship is marriage-like. This definition of cohabitant is designed to identify those cohabitants whose relationship is one of interdependence and a publicly acknowledged commitment to permanence.

In certain situations, the intestate may be living separate and apart from his or her spouse and be residing at the time of death with a cohabitant, as defined. In this situation, the surviving spouse is deemed to predecease the intestate, and the cohabitant takes the spouse's share under the proposed act. The separated spouse would be left to his or her rights under the *Matrimonial Property Act* and *Family Relief Act*. As previously recommended in Report for Discussion No. 17, *Division of Matrimonial Property on Death*, every surviving spouse should be entitled to seek division of matrimonial property on death of the deceased spouse.

Issue

If the intestate dies leaving issue but no surviving spouse or cohabitant, the estate should be distributed among the issue per capita at each generation. This is a new system of representation that replaces the *per stirpes* method of representation. The advantages of the new system of representation are as follows:

- The initial division of the estate is made at the nearest generation to the intestate that contains at least one living member. This ensures that equal treatment of grandchildren when no children of the intestate survive the intestate.
- Members of the same generation are always treated equally.

- Members of a remoter generation never take a larger share than members of a closer generation.

Next of kin

The proposed distribution scheme would replace degrees of consanguinity with a parentelic system. See explanation at pages 147 to 160 (of the report). The advantages of such a system are as follows:

- A parentelic system ensures that those who are closest to the intestate will receive the estate. For example, under the existing law, a grandnephew, a cousin, and a great-aunt are all of the 4th degree of consanguinity and would share equally. A parentelic system prefers a grandnephew to a cousin and prefers a cousin to a great-aunt.
- It will be easier and less costly to determine those who will inherit the estate
- A parentelic system divides the estate between both sides of the family.

Other

The proposed distribution scheme retains the doctrine of advancement. It also contains a survivorship clause that requires any potential beneficiary to survive the intestate by 15 days. In addition, kindred of the half-blood will inherit equally with those of the whole-blood in the same degree.

The proposals represent a clear and certain distribution scheme that will adequately serve Albertans for many decades to come.

Report for Discussion No. 18 (Four Volumes)

FAMILY LAW: Overview; Spousal Support; Child Support; Child Guardianship, Custody and Access

Spousal Support

Summary of Recommendations

ALRI Report for Discussion No. 18.2 contains recommendations for a stand-alone spousal support remedy to govern the financial support rights

and obligations existing between spouses after marriage breakdown. If implemented, the recommendations would modernize Alberta family law, bringing it into harmony with divorce law and the law in other provinces or territories.

The cornerstones of spousal support would be one spouse's need and the other spouse's ability to pay. The right to spousal support would be determined in accordance with the same objectives and factors as apply on divorce. These new criteria would replace the fault-based criteria on which spousal support was based historically and is still based in Alberta today. A spouse's misconduct affecting the marital relationship would no longer be a consideration.

Spousal support would be available to marriage partners, or to a man and woman who are or have cohabited in a marriage-like relationship of some permanence. The requisite degree of "permanence" would be established by at least three years of conjugal cohabitation or the presence of a child.

The court would have wide powers. In order to assess the amount of support payable, the court would have power to require advance financial disclosure by the spouses or a spouse's workplace, and to order that any financial information disclosed be kept confidential. In ordering relief, it would be able to specify the time period for which and conditions under which support is to be paid. As it can in divorce cases, the court would be able to order one spouse to secure or pay, or secure and pay, periodic or lump sum support or both, for the other spouse's support. It would also be able to make certain orders with respect to interests in property, including orders for the conveyance or transfer of property, variation of an existing settlement of property, possession of the matrimonial home, continuation of a life insurance policy or a pension or other benefit plan or designation of a beneficiary under such a policy or plan, and protection against improper gifts or transfers of property. Where it would be unjust to enforce them, the court would have power to disregard the provisions in an agreement between the spouses.

The court would be able make an interim support order to cover the time period until the court makes a decision about spousal support. It would also be able to vary an order, once made, where circumstances change or evidence that was not previously available has come to light.

Child Support

Summary of Recommendations

ALRI Report for Discussion No. 18.3 contains recommendations on the financial support obligations owed by parents to their children. The recommendations promote equality among children by eliminating out-dated distinctions having to do with a child's status in a family as either a "child of the marriage" or a child born outside marriage. Like the recommendations on spousal support, if implemented, the recommendations on child support would modernize Alberta family law, bringing it into closer harmony with divorce law and the law in other provinces or territories.

The child support obligation would be based on the relationship between parent and child, no matter what the relationship between the child's parents, be it marital or non-marital, cohabitational or non-cohabitational and no matter what living arrangements are made for a child. A parent would be required to pay support for a child who is under 18 years of age and has not withdrawn from their charge. A parent would also be required to pay support for a child who, although 18 years of age or over is unable by reason of illness, disability, or other cause to withdraw from parental charge or obtain the necessaries of life.

The objective of child support law would be to foster the equitable sharing by both parents of the provision of a reasonable standard of living to their child under 18 years of age, or 18 years of age or over, in the circumstances just described. The amount of child support would be calculated using the Federal Child Support Guidelines that apply in divorce cases. These Guidelines provide for the child's needs to be met by the child's parents in proportion to their relative abilities to pay. [Unless Alberta decides to develop its own guidelines.]

The court would have discretion to determine that a child support obligation is owed by a person who stands or has stood in the place of a parent and to determine the amount of child support to be paid. The discretion would be exercisable even where that person has withdrawn from the relationship.

As it would in relation to spousal support, the court would have wide powers in relation to child support. In order to assess the amount of support payable, the court would have power to require advance financial disclosure by the parents or a parent's workplace, and to order that any financial information disclosed be kept confidential. In ordering relief, it would be able to specify the time period for which and conditions under which support is to be paid. As it can in divorce cases, the court would be able to order a parent to secure or pay, or secure and pay, periodic or lump sum support or both, for the other child's support. It would also be able to make certain orders with respect to interests in property, including orders for the conveyance or transfer of property, variation of an existing settlement of property, possession of the matrimonial home, continuation of a life insurance policy or to a pension or other benefit plan or designation of a beneficiary under such a policy or plan, or protection against improper gifts or transfers of property. Where enforcing them would not be in the best interests of the child, the court would have power to disregard the provisions for child support in an agreement entered into by the child's parents.

The court would be able make an interim support order to cover the time period until the court makes a decision about spousal support. It would also be able to vary an order, once made, where circumstances change or evidence that was not previously available has come to light.

Child Guardianship, Custody and Access

Summary of Recommendations

ALRI Report for Discussion No. 18.4 contains recommendations to govern the responsibilities of parents, or parent substitutes, to provide care, guidance, control and protection in bringing up children until they reach 18 years of age. These responsibilities are encompassed by the concept of "guardianship," a concept drawn from the common law which is understood in modern times

to signify a bundle of responsibilities and rights held by an adult, usually the child's parents, to be exercised for the benefit of the child.

If implemented, the recommendations would provide a modern framework for parental decision-making with respect to children and for the exercise of court jurisdiction by replacing the many out-dated, overlapping and inconsistent provisions that now exist within Alberta statutes. This framework would be compatible with divorce law.

As they are under the existing law, all decisions would be required to be made in the best interests of the child. The use of this universally applied test reduces the impact of the statutory differences in the federal and provincial laws and produces consistent decision making in practice.

Parents who live together in a relationship of some permanence would share guardianship of their child from birth. Their guardianship would be established by statute. In addition the court would have power to appoint or guardian to act with, or in the place of a guardian, or to remove a guardian who is unsuitable. An existing guardian would be able to name a person to step into the guardian's shoes should the guardian die or become incapable of performing the functions of guardian. Legislation would identify several factors for the court to consider in deciding whether guardianship is in child's best interests.

Parents (or other guardians) who are living separate and apart would be encouraged to enter into consensual arrangements for shared parenting. Where they cannot agree (a situation which is seen as the exception rather than the rule), the Sole Custody Model of parental responsibilities and rights would apply. The report's authors believe that this model for the resolution of parental differences is more likely to bring stability to the child's life than continuing disagreement between parents (or other guardians) under a court order for shared parenting. Under the Sole Custody Model, the law would give one parent (or other guardian) — the "custodial guardian" — sole custody and clear decision making authority over the child. It would give the parent (or other guardian) who does not have custody — the "non-custodial guardian" — complementary guardianship powers, including contact with the

child, otherwise known as "access" which legislation would express as the right of the child. Legislation would specify the respective responsibilities and rights of the custodial and non-custodial guardians. The court, acting in the best interests of the child, would have discretion to modify these responsibilities and rights as appropriate to the circumstances of each individual case. Legislation would identify several factors for the court to consider in deciding whether guardianship, custody or access is in child's best interests.

The court would have discretion to make an order for access by a person who is not a guardian. This discretion would be exercisable where the child's parents (or other guardians), if alive, are living separate and apart, or where one or both of the child's parents (or other guardians) are deceased. This discretion would extend to grandparents, among others.

The court would have wide powers in relation to child guardianship, custody or access. It would be able to divide the incidents of guardianship among the child's guardians or to make orders for guardianship, custody or access in favour of one or more persons. It would be able to make its orders subject to such terms, conditions or restrictions as it thinks fit and just. This power would include the power to give directions for the supervision of custody or access. In conjunction with its proceedings, and on proper notice to others with an interest, the court would have the power to grant an order for the possession of the matrimonial home and use of household goods for the benefit of a child. Where the parties agree and the court is satisfied that the child's best interests would be served, the court would have discretion to grant a consent order without holding a hearing and to incorporate in the order all or part of a provision in a written agreement made previously by the parents (or other guardians). Where enforcement would not be in child's best interests, the court would have power to disregard the provisions with respect to parenting made in such an agreement.

As it would in relation to spousal and child support, the court would be able make interim orders to cover the time period until the court makes a decision about guardianship, custody or access. It would also be able to vary

an order, once made, where circumstances change or evidence that was not previously available has come to light.

Consultation Memorandum No. 5

Should a Claim for Punitive Damages Survive Death?

This Consultation Memorandum raises a postscript to ALRI's Final Report on the question of whether or not a claim for damages for the loss of future earnings should survive the claimant's death. That report recommends that such a claim should not survive the claimant's death, and that the issue of compensation for non-pecuniary loss should be dealt with in the *Fatal Accidents Act*. The narrow focus of this Consultation Memorandum is whether punitive or exemplary damages should be treated in a different fashion from non-pecuniary losses in general.

The report poses five questions as follows:

1. Are many claims for punitive damages which otherwise would be strong enough to pursue **not** brought because the survival legislation precludes them?

2. Are there many cases in which claimants with valid claims for punitive damages die before they can pursue the claims to judgment?

3. Will a legal situation in which punitive damages is upon occasion the only remedy that is not precluded by survival legislation, influence courts to change the requirements for awards of punitive damages?

4. Should claims for punitive or exemplary damages survive the death of the claimant?

5. Should the *Survival of Actions Act* be amended to provide for the survival of claims for punitive or exemplary damages?

Consultation Memorandum No. 6

Powers and Procedures for Administrative Agencies: Model Code

This memorandum constitutes the primary consultative document with the groups that the Institute has assembled to assist in the development of a Model Code of Powers and Procedures for Adjudicative and Administrative Tribunals in Alberta.

A description of the possible powers and procedures has been developed by counsel, examined by the Project Committee, and finally reviewed by the Institute's Board. The descriptive set of powers and procedures is set out in the memorandum and divided into four major areas – pre-hearing powers and procedures, hearing powers and procedures, decisions and reasons, and miscellaneous powers. Each recommendation is set out along with annotations and comments for the reader. The recommendation is set out as part of a work book allowing opportunity for the reader or commentator to agree or disagree and provide comments or proposed revisions on the individual recommendation.

After consultation with practitioners, tribunal representatives, and departmental representatives, the result will be a comprehensive annotated model code of powers and procedures. The intention is to create a code that will provide the necessary flexibility for each agency to carry out its designated tasks as effectively, efficiently, and fairly as possible.

ADMINISTRATIVE PROCEDURES

The Consultation Memorandum has now been reviewed in workshops presented to tribunal representatives and departmental contact persons. Final decisions on policy have been made by the Institute Board and the various recommendations are now being annotated. The Model Code will be issued as part of our final report on this subject.

BUSINESS NAMES LEGISLATION

Work on this project has been suspended for the time being.

CASE MANAGEMENT

We are assisting the Court of Queen's Bench Committee with background research relating to Practice Notes 3 and 7.

CASEFLOW MANAGEMENT

This project is on hold pending a financial commitment from the Department of Justice for the creation and installation of a new computer system for calendaring and case-tracking.

CLASS ACTIONS

Class Actions is at the Project Selection Stage – i.e. does the suggested topic meet the criteria for whether the Institute should adopt it as a project. The existing law is found in Rule 42 of the Rules of Court, a rule which our Court of Appeal has described as inadequate and out-of-date. Other bodies, including the Law Society have suggested change. Other jurisdictions have

considered and enacted legislation similar to the Unfair Class Proceedings Act, recently promulgated by the Uniform Law Conference of Canada.

We have decided to consider the possible project under a new procedure by which the Board has the results of consultation with the persons or bodies who, because of their knowledge, experience, and awareness of the issues in question, assist the Institute in making the project selection decision. In addition, it is expected the preliminary process will provide a project plan by which progress can be monitored if and when the project is formally adopted.

Gauging the level of interest in the project is to be done by the responses to questions on the experiences under Rule 42 and who would be impacted by or likely to have a view on suggestions for change.

COST OF CREDIT

Part 9 of the Fair Trading Act, enacted in the summer of 1998 to come into force on September 1, 1999, is based largely on the Uniform Cost of Credit Disclosure Act (CCDA). The CCDA is the result of a collaborative project between the Institute and the Uniform Law Conference of Canada. The CCDA is intended to provide a model for legislative implementation of the 1998 interprovincial and federal agreement on harmonization of cost of credit disclosure legislation across Canada. During the period covered by this report the Institute has assisted government officials and legislative counsel in creating the detailed cost of credit disclosure regulations contemplated by Part 9 of the FTA. Once the regulations have been finalized, the Institute plans to issue a final report describing the harmonization process and highlighting key elements of the new cost of credit disclosure regime.

DISCOUNT RATES

A report for discussion on this subject will be commenced in the spring of 2000.

FAMILY LAW

A four-volume set of Reports for Discussion was published in October 1998. We have undertaken to consult on our recommendations, working together with the Alberta Government Family Law Reform Project Committee. This Committee had been working on a plan to implement major structural, substantive and procedural and related family law reforms by the year 2002. However, progress on the Project has been temporarily suspended to permit the Government to consider a proposal to restructure the FLRP Committee, and this will extend the time period. An additional extension to the time frame may be required because of the recent case law on common law and same sex partnership relationships. We are currently waiting for developments on the restructuring proposal.

As we reported in our Annual Report for 1997-1998, our series of reports sets the stage for a fairly ambitious legislative agenda consisting of both short term and longer term issues. First, there is the need to respond to a Court of Appeal decision allowing a period of time within which the issues of cohabitation and the rights of cohabitees can be incorporated within the legislation. Second, there is the issue of necessary changes to make the custody and access system work more effectively. Third, is the longer term goal of rationalizing all of the elements of provincial family law legislation which have been allowed to develop separately, and to diverge somewhat over the last 20 years. Finally, there is the need to integrate the substantive law with procedural issues, particularly in the area of the use of mediation techniques early on in the process, and for enforcement issues at the later stages of the process. The integration process must also take into account the changes in the federal divorce system, which can have the effect of overriding provincial initiatives.

FATAL ACCIDENTS REVIEW

A review of the monetary figures in the Act was forwarded to the government in July 1999. After considering this review, the Legislative Assembly

increased the damage awards established in section 8 of the *Fatal Accidents Act* to overcome the effects of inflation.

The amendments to the *Fatal Accidents Act* required a 5 year review of the amounts set as non-pecuniary damages in wrongful death situations. That period requires the review to be in place by fall 1999. We are currently reviewing the case law and the factors set out in the review process. A report to the government will be issued in the early summer, as a result of which, the damage awards fixed in the legislation are likely to be adjusted for inflation.

LIMITED LIABILITY PARTNERSHIPS

In December 1998 the Institute provided the Government with a summary report on LLPs. The summary report contained the Institute's recommendations and a brief statement of the rationale for the recommendations. The Institute issued its final report on LLPs in April 1999. The final report contained a more detailed analysis of the issues and elaborated the rationale for our recommendations. Amendments to the *Partnership Act* that provide for LLPs were enacted in May of 1999 and are expected to come into force by the end of the year.

MATRIMONIAL PROPERTY ON DEATH

Work on the final report on this subject stemming from Report for Discussion No. 17 will begin in the fall of 1999. This report stems from a major choice created by the Supreme Court of Canada decision in *Tataryn* v. *Tataryn Estate*. That decision on legislation similar to Alberta's *Family Relief Act*, created a right to the equivalent of matrimonial property on death. However, that policy raises a significant choice as to whether the accommodation should be made in the *Family Relief Act* or in the *Matrimonial Property Act*. In our Report for Discussion, we expressed the opinion that the accommodation should be made in the *Matrimonial Property Act*, where the issues can be dealt with more directly and more squarely. In our Final Report, we will determine whether that policy is to be confirmed, and

whether the proposals we have made to accommodate that policy are correct. The Final Report will be published in June or July of 2000.

OCCUPIERS' LIABILITY

A report to the Minister of Justice on Occupiers' Liability and Recreational Use of Land is currently being prepared, and will be released in the spring of 2000.

PRUDENT INVESTOR RULE (TRUSTEE INVESTMENTS)

The Institute expects to circulate a consultation memorandum on the prudent investor rule in the fall of 1999, with a final report to follow in late 1999 or early 2000.

UNIFORM ENFORCEMENT OF JUDGMENTS ACT & COURT JURISDICTION AND PROCEEDINGS TRANSFER ACT

The Uniform Enforcement of Foreign Judgments Act is scheduled for completion at the 1999 Uniform Law Conference of Canada, but will require further consideration by the Uniform Law Conference based on discussions a the Hague Conference. ALRI will work to develop a composite Alberta package of the Model Acts including, Enforcement of Canadian Judgments and Decrees, Court Jurisdiction, and Enforcement of Foreign Judgments, once the last peace is in place from the ULC.

WILLS: NON-COMPLIANCE WITH FORMALITIES

Wills which do not strictly comply with the formalities required by the *Wills Act* cannot, as a usual rule, be admitted to probate. The question be answered in this project is whether some provision should be made to admit to probate wills which do not strictly comply with the formalities but do express the testamentary intentions of testators. A final report is expected by May 2000 after consultation with the judiciary and bar by way of Consultation Memorandum.

Much has been said about the benefits which come to the Institute from its tri-partite foundation, and the links that it forges with various parts of the profession and the legal community. Those links are crucial to the Institute. Not only do they affect the quality of the finished product, but also the comprehensiveness of the consultation process. They are also important in allowing the Board to assess the priority that should be attached to various project suggestions. We are grateful for the close working relationship with the Law Society of Alberta, spearheaded by the Presidents of the Law Society, Mr. Flynn, followed by Mr. Clackson. In particular we enjoy the benefits of the very broad knowledge and the considerable organizational skills of the secretary Mr. Freeman in ensuring that we are plugged-in to various initiatives and privy to feedback from the profession on any of the projects which we have underway. The ability to reach the profession, both though Benchers' convocations and through circulation of the Advisory is a very important part of our communication strategy.

Since the end product of most of our reports is legislation, our contact with the Department of Justice is vital. But our relationship is based not on the Department being a consumer of our reports, but on a mutual interest in improving the law and administration of justice for all of the province and all Albertans. On an operational level, it has been vital to have Mr. Clark Dalton as a member of our Board. On a policy level, one cannot underestimate the contribution and support of the Deputy Minister of Justice Mr. Neil McCrank, Q.C., and the Ministers, the Honourable Jon Havelock, Q.C. and the Honourable David Hancock, Q.C. We look forward to the same relationship with Mr. McCrank's successor, Mr. Paul Bourque, and already have evidence of and confidence in that working relationship continuing.

Two other bodies with whom we work closely add immeasurably to our work. The first is the Alberta Branch of the Canadian Bar Association, whose sections play a large part in our consultation process. We are grateful to Presidents Lambrecht and Dunnigan and to Executive Director Terry Evanson for their continued support and contact with the Association.

Similarly, our close relationship with the Legal Education Society of Alberta, and particular through its Director, Mr. Hugh Robertson, Q.C., has given us the opportunity of explaining to the profession some of the issues raised by our reports. In particular, with appropriate planning, we have been able to give the profession a heads up on legislative initiatives such as Cost of Credit Disclosure and Limited Liability Partnerships.

In particular, I would like to thank those individuals who have served on our Project Management Committees and on our consultative committees. The task of assisting Counsel with policy development, and reviewing materials as they prepared for publication is a significant one. We appreciate both the time and effort and the expertise that goes into this task. Each individual member is identified at the beginning of the specific report.

Finally, I would like to acknowledge the funding contributions which allow the Institute to continue to carry out its objectives. The University of Alberta has been our home for over 30 years and continues to provide a supportive and helpful environment. The Department of Justice has continued its level of funding. We are especially grateful to the Alberta Law Foundation through the office of Chair, Mr. Anthony Friend, Q.C., and the Executive Director, Mr. Owen Snider. Not only has the Foundation been able to provide 3-year estimates for funding levels, but it has been able to increase its funding levels somewhat from the amounts to which we were reduced a few years ago. This increase is a lifeline which has allowed the Institute to continue operating at its current level of productivity.

To all of those who assist in the task of law reform, we express our grateful thanks.

	FINAL REPORT	ENACTMENT
1*	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, R.S.A. 1970, c. 75 (now R.S.A. 1980, c. C-33, am. by S.A. 1982, c. 14).
2*	Powers of Personal Representatives to Grant Options (June 1969)	Wills Act, R.S.A. 1970, c. 393, s. 30 (now R.S.A. 1980, c. W-11, s. 30). Devolution of Real Property Act, R.S.A. 1970, c. 109, s. 13 (now R.S.A. 1980, c. D-34, s. 12).
3*	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 1980, c. O-3).
4*	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 1980, c. A-4).
5*	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 1980, c. G-12) accepted. Recommendations for incidental amendments not acted upon.
6*	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 1980, c. P-4).
7*	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
8*	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now R.S.A. 1980, c. W-1).
9*	Rule in *Saunders* v. *Vautier* (February 1972)	S.A. 1973, c. 13, s. 12 amending the Trustee Act, R.S.A. 1970, c. 373, s. 37 (now R.S.A. 1980, c. T-10, s. 42).
10*	Powers of Maintenance and Advancement (June 1972)	S.A. 1974, c. 65, s. 9 amending the Trustee Act, R.S.A. 1970, c. 373, ss. 31-33 (now R.S.A. 1980, c. T-10, ss. 32, 34, 35, 36(3), 37).

	FINAL REPORT	ENACTMENT
11*	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 amended 1975, c. 5 (2 sess.) (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 10-13; Land Titles Act, R.S.A. 1980, c. L-5, ss. 71, 72, 119).
12*	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 1980, c. E-16).
13*	Judicature Act, Section 24 (August 1974)	S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193.
14	Minors' Contracts (January 1975)	
15*	Validity of Rules of Court (December 1974)	S.A. 1976, c. 58, s. 6(4) amending the Judicature Act, R.S.A. 1970, c. 193, s. 39 (now R.S.A. 1980, c. J-1, s. 47).
16*	Rule in *Hollington v. Hewthorn* (February 1975)	S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act, R.S.A. 1970, c. 127, s. 27 (now R.S.A. 1980, c. A-21, s. 27).
17*	Small Projects (June 1975)	S.A. 1976, c. 55, s. 2 amending the Workers' Compensation Act, S.A. 1973, c. 87, s. 15 (now R.S.A. 1980, c. W-15, s. 15); S.A. 1976, c. 58, s. 3 amending the Bulk Sales Act, R.S.A. 1970, c. 37 (now R.S.A. 1980, c. B-13, ss. 1(f), (j), 4(2), 6(b), 7, 14).
18*	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 1980, c. M-9), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home.
19*	Consent of Minors to Health Care (December 1975)	
20	Status of Children (June 1976)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11.

**Publication out of print*

	FINAL REPORT	ENACTMENT
21*	Purchase by a Company of Shares Which It Has Issued (January 1977)	S.A. 1977, c. 13, s. 2 amending the Companies Act, R.S.A. 1970, c. 60, s. 41 (reenacted as R.S.A. 1980, c. C-20, ss. 42-49, 51-54, then superseded by S.A. 1981, c. B-15, ss. 32 and 33: see Report 36).
22*	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now R.S.A. 1980, c. L-6), based in large part on our recommendations.
23*	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 14-19, 20-34).
24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 1980, c. S-30; Fatal Accidents Act R.S.A. 1980, c. F-5, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 1980, c. L-5, s. 53).
25	Family Law Administration: the Unified Family Court (April 1978)	
26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

**Publication out of print*

	FINAL REPORT	ENACTMENT
27	Matrimonial Support (March 1978)	S.A. 1977, c. 64 amending Part 4 of the Domestic Relations Act, R.S.A. 1970, c. 113 (now covered by the Maintenance Enforcement Act, S.A. 1985, c. M-0.5, establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); S.A. 1977, c. 92 amending the Social Development Act, R.S.A. 1970, c. 345 (now R.S.A. 1980, c. S-16, ss .14, 15); S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act, R.S.A. 1970, c. 86 (now R.S.A. 1980, c. D-5, ss .3(2), 3(3), 4(e)-(f), (6). (Our proposals for change in the substantive law have not yet been implemented.)
28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5.
29	Family Relief (June 1978)	
30*	The Builders' Lien Act: Certain Specific Problems (March 1979)	S.A. 1985, c. 14 amending the Builders' Lien Act, R.S.A. 1980, c. B-12.
31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	
32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted S.A. 1977, c. 76, s. 6 to come into force 1 September 1979 (now Insurance Act, R.S.A. 1980, c. I-5, s. 310) (This is not the principal recommendation of the Report.) Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act (S.A. 1990, c. 22, s. 1).

**Publication out of print*

	FINAL REPORT	ENACTMENT
33	Inter-Spousal Tort Immunity (April 1979)	Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act (S.A. 1990, c. 22, ss. 2 and 3).
34	Service of Documents During Postal Interruptions (June 1979)	S.A. 1980, c. 88 (now Judicature Act, R.S.A. 1980, c. J-1, ss. 33-37).
35*	Defamation: Fair Comment and Letters to the Editor (October 1979)	S.A. 1980, c. 11 amending the Defamation Act, R.S.A. 1970, c. 87 (now R.S.A. 1980, c. D-6, s. 9).
36*	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15.
37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
38	The Uniform Sale of Goods Act (October 1982)	
39	Defences to Provincial Charges (March 1984)	
40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17.
41	Compensation for Security Interests in Expropriated Land (May 1984)	
42	Debt Collection Practices (June 1984)	See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5.
43	Protection of Children's Interests in Custody Disputes (October 1984)	
44	Statute of Frauds (June 1985)	

**Publication out of print*

	FINAL REPORT	ENACTMENT
45*	Status of Children: Revised Report, 1985 (November 1985)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11.
46*	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987.
47	Survivorship (August 1986)	
48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987.
50	Prejudgment Remedies for Unsecured Claimants (February 1988)	Civil Enforcement Act, S.A. 1994, c. C-10.5.
51	Proposals for a New Alberta Arbitration Act (October 1988)	Arbitration Act, S.A. 1991, c. A-43.1.
52	Competence and Human Reproduction (February 1989)	
53	Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)	
54	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)	
55	Limitations (December 1989)	Limitations Act, S.A. 1996, c. L-15.1. In Force March 1, 1999
56	The Bulk Sales Act (January 1990)	Miscellaneous Statutes Amendment Act, 1992, S.A. 1992, c. 21, s. 5.
57	Section 16 of the Matrimonial Property Act (March 1990)	Miscellaneous Statutes Amendment Act, 1991, S.A. 1991, c. 21, s. 24.

**Publication out of print*

	FINAL REPORT	ENACTMENT
58	Division of Canada Pension Plan Credits in Alberta (November 1990)	
59	Enduring Powers of Attorney (December 1990)	Powers of Attorney Act, S.A. 1991 c. P-13.5.
60	Status of Children: Revised Report, 1991 (March 1991)	Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11.
61	Enforcement of Money Judgments, 2 Vols., (March 1991)	Civil Enforcement Act, S.A. 1994, c. C-10.5.
62	Proposals for the Reform of the Public Inquiries Act (November 1992)	
63	Section 195 of the Land Titles Act (February 1993)	Miscellaneous Statutes Amendment Act, 1994, S.A. 1994, c.23, s.26.
64	Advance Directives and Substitute Decision–Making in Personal Health Care (March 1993) *(A Joint Report of the Alberta Law Reform Institute and the Health Law Institute)*	Personal Directives Act, S.A. 1996, c. P-4.03. Proclamation December 1, 1997 O/C #5319
65	The Domestic Relations Act (DRA) – Phase 1. Family Relationships: Obsolete Actions (March 1993)	
66	Non-Pecuniary Damages in Wrongful Death Actions—A Review of Section 8 of the Fatal Accidents Act (May 1993)	Fatal Accidents Amendment Act, 1994, S.A. 1994, c.16.
67	Transfers of Investment Securities (June 1993)	
68	Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act (September 1993)	Miscellaneous Statutes Act, 1994, S.A. 1994, s. 46.
69	Proposals for a Land Recording and Registration Act for Alberta, 2 Vols., (October 1993)	Principles adopted in the Metis Settlements Land Registry Regulation (AR 361/91)

	FINAL REPORT	ENACTMENT
70	Mortgage Remedies in Alberta (June 1994)	
71	The Presumption of Crown Immunity (July 1994)	
72	Effect of Divorce on Wills (November 1994)	
73	Revision of the Surrogate Rules (Final Report) (May 1996)	The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. The Rules and Forms were enacted by OC 32/95 on June 19, 1995.
74	Protection Against Domestic Abuse (February 1997)	Many of the recommendations were incorporated in Bill 214 which was debated in the 1996 Spring Session of the Legislature and passed in 1998. It is currently awaiting proclamation.
75	"Last Clear Chance" Rule (August 1997)	
76	Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998)	
77	Limited Liability Partnerships (April 1999)	
78	Reform of the Intestate Succession Act (June 1999)	

*Publication out of print

	REPORTS FOR DISCUSSION	NOTE
1*	Protection of Trade Secrets (February 1984)	
2	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)	
3	Remedies of Unsecured Creditors (May 1986)	
4	Limitations (September 1986)	
5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)	
6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)	
7	Enduring Powers of Attorney (February 1990)	
8	Towards a New Alberta Land Titles Act (August 1990)	
9	Mortgage Remedies in Alberta (April 1991)	
10	Revision of the Surrogate Rules (October 1991)	
11*	Advance Directives and Substitute Decision–Making in Personal Health Care (November 1991)	
12	Non-Pecuniary Damages in Wrongful Death Actions — A Review of Section 8 of the Fatal Accidents Act (June 1992)	
13	Report on Liens (September 1992)	
14	The Matrimonial Home (March 1995)	

**Publication out of print*

	REPORTS FOR DISCUSSION	NOTE
15*	Domestic Abuse: Toward an Effective Legal Response (June 1995)	
16	Reform of the Intestate Succession Act (January 1996)	
17	Division of Matrimonial Property on Death (March 1998)	
18	Family Law (October 1998) 18.1 Overview 18.2 Spousal Support 18.3 Child Support 18.4 Child Guardianship, Custody and Access	

**Publication out of print*

	ISSUES PAPERS	NOTE
1	Towards a New Arbitration Act for Alberta (July 1987)	
2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)	
3	Public Inquiries (November 1991)	
4	Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)	

**Publication out of print*

	DISCUSSION PAPERS	NOTE
1	Civil Litigation: The Judicial Mini-Trial (August 1993)	

*Publication out of print

	RESEARCH PAPERS	NOTE
1*	Rent Control; Security of Tenures (November 1975)	
2*	Entry of Landlord; Locks and Security Devices (November 1975)	
3*	Obligation to Repair; Security Deposits (November 1975)	
4*	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)	
6*	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)	
7*	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)	
8*	Mobile Homes (November 1975)	
9*	Consent of Minors to Medical Treatment (May 1975)	
10	Illegitimacy (June 1974)	
11*	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)	
12*	Statute of Frauds (March 1979)	
13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioural and Social Sciences: March 1981)	
14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)	

**Publication out of print*

	RESEARCH PAPERS	NOTE
15	Survey of Adult Living Arrangements: A Technical Report (November 1984)	
16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)	
17*	Corporate Directors' Liability (February 1989)	
18	Report on Referees (February 1990)	The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.
19	Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)	
20	Court-Connected Family Mediation Programs in Canada (May 1994)	

**Publication out of print*

CONSULTATION MEMORANDA

1 Division Of Pension Benefits Upon Marriage Breakdown (September 1996)

2 Reasonable Accommodation In The Workplace (November 1995)

3 Business Names Legislation (December 1996)

4 Should a Claim for Loss of Chance of Future Earnings Survive Death? (August 1997)

5 Should a Claim for Punitive Damages Survive Death? (December 1998)

6 Powers and Procedures for Administrative Agencies: Model Code (April 1999)

**Publication out of print*

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

**Publication out of print*

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon) (March 1993)